

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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In re

ACCESS INSURANCE SERVICES, INC.,
a Nevada Corporation,

Debtor,

JANET L. CHUBB, Chapter 7 Trustee for
ACCESS INSURANCE SERVICES, INC.,
a Nevada corporation, and LENNARD W.
STILLMAN, Special Duty Liquidator of
WESTERN INSURANCE COMPANY, a
Utah Corporation,

Plaintiffs,

v.

LG WARRANTY CO., LLC, an Ohio limited
liability company, et al.,

Defendants.

Case No. 3:13-cv-00699-MMD

ORDER

(Defs' Motion to Withdraw Reference
– dkt. no. 1)

I. SUMMARY

Before the Court is Defendants LG Warranty Co., LLC ("LG") and Dale Holding Co. of Columbus' ("Dale Holding") Motion to Withdraw Reference ("Motion"). (Dkt. no. 1.) For the reasons set out below, the Motion is denied.

II. BACKGROUND

Plaintiffs Janet L. Chubb, the Chapter 7 Trustee ("Trustee") for Debtor Access Insurance Services, Inc. ("Access" or "Debtor"), and Lennard W. Stillman, Special

1 Deputy Liquidator ("Liquidator") of Western Insurance Company ("Western"), filed a
2 Complaint as co-plaintiffs in United States Bankruptcy Court, District of Nevada, against
3 Defendants LG, Dale Holding, Christopher W. Lucas ("Lucas"), Sean M. Gouhin
4 ("Gouhin"), and Thomas P. Heilman II ("Heilman"). (Dkt. no. 1-4.)

5 The Complaint alleges that Western and Access had business dealings with LG
6 relating to the writing of insurance for automobile warranty programs "written, sold,
7 and/or administered by [LG] in Ohio and elsewhere" and had loaned money secured by
8 promissory notes to LG. (*Id.*) Plaintiffs assert the following seventeen (17) claims for
9 relief: (1) breach of a 2006 Promissory Note against LG regarding money owed to
10 Liquidator/Western; (2) breach of guaranty for the 2006 Promissory Note against Lucas
11 and Gouhin; (3) breach of a 2008 Promissory Note against LG regarding money owed to
12 Trustee/Access; (4) breach of guaranty for the 2008 Promissory Note against Lucas and
13 Gouhin regarding money owed to Trustee/Access; (5) breach of 2010 Promissory Notes
14 against LG regarding money owed to Liquidator/Western; (6) declaratory relief regarding
15 escrow proceeds and request for order directing proceeds to pay the promissory notes;
16 (7) fraud against all Defendants; (8-14) claims for turnover, fraudulent transfer,
17 avoidance of transfer, preferences and recovery of avoided transfers pursuant to Title 11
18 bankruptcy statutes and Utah state law; (15) breach of contract regarding money owed
19 Trustee/Access; (16) unjust enrichment regarding money owed Trustee/Access; and (17)
20 request for attorney's fees. (*Id.*)

21 In sum, the first, second and fifth claims in the Complaint seek relief for the
22 Liquidator only and are apparently based in state common law. The third, fourth, fifteenth
23 and sixteenth claims seek relief for the Trustee only and also appear to be based in state
24 common law. The sixth, seventh and seventeenth claims for relief appear to be jointly
25 asserted. The eighth through fourteenth claims for relief are asserted pursuant to title 11
26 by the Trustee and pursuant to state statutes by the Liquidator.

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1 Defendants moved to dismiss this action and the bankruptcy court held a hearing.
2 (Dkt. no. 1-1 at 2.) At the hearing, the bankruptcy court instructed the parties to file a
3 motion to withdraw the reference. (*Id.* at 3.)

4 **III. DISCUSSION**

5 **A. Legal Standard**

6 District courts have original and exclusive jurisdiction over all cases under title
7 11. 28 U.S.C. § 1334(a). District courts also “have original but not exclusive jurisdiction
8 of all civil proceedings arising under title 11, or arising in or related to cases under title
9 11.” 28 U.S.C. § 1334(b). District courts may refer to the bankruptcy court “all cases
10 under title 11 and any or all proceedings arising under title 11 or arising in or related to a
11 case under title 11.” 28 U.S.C. § 157(a). Section 157(d) provides for two ways that a
12 reference may be withdrawn from a bankruptcy proceeding, one mandatory and one
13 permissive. Defendants appear to seek permissive withdrawal. Section 157(d) allows
14 permissive withdrawal “for cause shown,” but does not provide guidance as to what is
15 necessary to show cause. Accordingly, courts have identified a variety of factors that
16 may be considered, including: (1) efficient use of judicial resources; (2) delay and costs
17 to parties; (3) uniformity of bankruptcy administration; (4) prevention of forum shopping;
18 and other related factors. *Sec. Farms v. Int’l Bhd. of Teamsters, Chauffers,*
19 *Warehousemen & Helpers*, 124 F.3d 999, 1008 (9th Cir. 1999) (citation omitted).

20 **B. Analysis**

21 Defendants ask this Court to withdraw the reference for the following reasons: (1)
22 the bankruptcy court cannot enter final judgment as to the Liquidator’s claims because
23 they are non-core; (2) the bankruptcy court cannot enter final judgment as to the
24 Liquidator’s claims as a result of *Stern v. Marshall*, 131 S.Ct. 2594 (2011); and (3) the
25 Liquidator’s claims are not “related to” the underlying bankruptcy proceeding for
26 purposes of § 1334(b) jurisdiction. (Dkt. no. 1-1 at 6–7.) The Court finds that it is
27 appropriate to leave this action with the bankruptcy court.

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1 The Court notes that the parties do not dispute the bankruptcy court's jurisdiction
2 over the Trustee's claims. Defendants acknowledge that the Trustee's claims may fall
3 "within the ambit of 'related to' jurisdiction" and indeed do not present any arguments to
4 the contrary. (*Id.* at 7.) Section 1334 provides for jurisdiction over three types of
5 proceedings: (1) proceedings "arising under" title 11; (2) proceedings "arising in" a case
6 under title 11; and (3) proceedings "related to" a case under title 11. 28 U.S.C. §§
7 1334(a), 1334(b). These types of proceedings may be referred to the bankruptcy court
8 pursuant to 28 U.S.C. § 157(a). "Proceedings 'arising under' title 11 involve causes of
9 action created or determined by a statutory provision of that title." *In re Wilshire*
10 *Courtyard*, 729 F.3d 1279, 1285 (9th Cir. 2013) (citation omitted). It is undisputed that
11 the Trustee asserts claims eight through fourteen pursuant to 11 U.S.C. §§ 547 and 548.
12 The Trustee's remaining claims all relate in some way to recovery of money owed under
13 the Promissory Notes. As the bankruptcy court's jurisdiction over the Trustee's claims is
14 not presently in dispute, the question before this Court is whether the Liquidator's claims
15 should proceed in bankruptcy court as well.

16 The Liquidator's claims may proceed in the bankruptcy court pursuant to that
17 court's supplemental jurisdiction. Pursuant to 28 U.S.C. § 1367(a), district courts have
18 "supplemental jurisdiction over all other claims that are so related to claims in the action
19 within [the court's] original jurisdiction that they form part of the same case or
20 controversy under Article III of the United States Constitution." The Ninth Circuit has
21 determined that "the bankruptcy court's 'related to' jurisdiction also includes the district
22 court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367" *In re Sasson*, 424
23 F.3d 864, 869 (9th Cir. 2005); *see also In re Pegasus Gold Corp.*, 394 F.3d 1189, 1195
24 (9th Cir. 2005) (*citing Sec. Farms v. Int'l Bhd. of Teamsters*, 124 F.3d 999, 1008 n.5 (9th
25 Cir. 1997)) (section 1367 supplemental jurisdiction applies to bankruptcy claims). A
26 bankruptcy court can properly exercise supplemental jurisdiction over "claims that
27 involve a 'common nucleus of operative facts' and would ordinarily be expected to be
28 resolved in one judicial proceeding," even where said claims have a relationship to the

1 underlying bankruptcy proceeding more tangential than what is generally required for
2 “related to” jurisdiction. *In re Pegasus*, 394 F.3d at 1194-95 (citing *United Mine Workers*
3 *v. Gibbs*, 383 U.S. 715 (1966)). Plaintiffs argue that there is a common nucleus of
4 operative fact in this case because Access and Western had an agency agreement, both
5 worked with LG, both loaned money to LG secured by the 2006 Promissory Note, and
6 both were parties to the escrow agreement through which Access and Western’s interest
7 in the promissory notes allegedly attached to the sale proceeds. (Dkt. no. 1-16 at 9-10.)
8 Furthermore, the Complaint alleges that Defendants presented Access with a letter
9 signed on behalf of Western and Access deeming all debts owed by LG under the 2006
10 and 2008 Promissory Notes to be satisfied. (Dkt. no. 1-4 ¶ 21.) The seventh claim for
11 relief asserts that this letter was produced by Defendants’ fraud. (*Id.* at 11-12.) Although
12 only the Liquidator seeks to recover on the 2006 Promissory Note, the Trustee seeks to
13 recover on the 2008 Promissory Note. The seventh claim for relief therefore affects
14 recovery under the promissory notes by both the Liquidator and the Trustee. The Court
15 determines that there is a common nucleus of operative facts such that it makes sense
16 to resolve the Trustee’s and the Liquidator’s claims in one proceeding.

17 Supplemental jurisdiction need not be exercised in every case in which it is found
18 to exist and courts should consider matters of “judicial economy, convenience and
19 fairness to litigants” before asserting jurisdiction over supplemental claims. *Gibbs*, 383
20 U.S. at 726. Judicial economy would best be served in this case by allowing all of the
21 claims to proceed in the bankruptcy court, where the Trustee’s claims properly reside.
22 This would also be more convenient to the parties as it would avoid potentially
23 duplicative discovery proceedings between the Trustee’s action in bankruptcy court and
24 the Liquidator’s action in this Court.

25 Defendants’ main objection to the exercise of supplemental jurisdiction is on
26 fairness grounds. Defendants argue that it would be unfair to Defendants to allow the
27 Liquidator to bootstrap its claims into bankruptcy court and then take advantage of the
28 bankruptcy rules’ nationwide service of process. (Dkt. no. 2 at 4-5, 7-9.) Defendants’

1 argument is speculative, however, and relies on the mere fact that the service of process
2 rules in bankruptcy court and district court are different, without explaining why that
3 difference is significant in this case. Defendants assert that the Liquidator is trying to
4 take advantage of the bankruptcy court's procedures but that alone is not sufficient to
5 raise fairness issues that would warrant refusal of supplemental jurisdiction.

6 Defendants additionally argue that the reference should be withdrawn because
7 claims before the bankruptcy court are non-core or *Stern* claims. The Court disagrees.
8 The Court is not compelled to withdraw a reference simply because certain claims may
9 be non-core. Recently, in *Executive Benefits Insurance Agency v. Arkison*, 134 S.Ct.
10 2165 (2014), the Supreme Court of the United States found that “[i]f a matter is non-core,
11 and the parties have not consented to final adjudication by the bankruptcy court, the
12 bankruptcy judge must propose findings of fact and conclusions of law.” 134 S.Ct. at
13 2172. Thus, the bankruptcy court has authority to hear non-core claims and “submit
14 proposed findings of fact and conclusions of law to the district court for de novo review
15 and entry of judgment.” *Id.* at 1273. As the Supreme Court further noted, the bankruptcy
16 court may “determine whether each claim before it is core or non-core.”¹ *Arkinson*, 134
17 S.Ct. at 2171 (citing 28 U.S.C. § 157(b)(3)).

18 In light of *Arkinson*, the Court finds it is appropriate for this proceeding to remain
19 in bankruptcy court. As it is undisputed that some of the Trustee's claims are core claims
20 that arise under title 11, and as the Court determines that the bankruptcy court may
21 exercise supplemental jurisdiction over Plaintiffs' remaining claims, efficient use of
22 judicial resources and uniformity of bankruptcy administration support leaving the
23 reference in place so that all claims may proceed in the bankruptcy court. See *Sec.*
24 *Farms*, 124 F.3d at 1008. The bankruptcy court may determine whether Plaintiffs' claims

26 ¹The Court is not persuaded to a different result by *In re Coe-Truman*
27 *Technologies, Inc.*, 214 B.R. 183 (N.D. Ill. 1997). Defendants rely on this case to argue
28 that withdrawal is appropriate because certain claims in the Complaint are non-core.
(Dkt. no. 1-1 at 4.) However, in *Coe-Truman*, the entire *proceeding* was non-core. *Coe-*
Truman, 214 B.R. at 187. Here, it is undisputed that Trustee's title 11 claims are core.

1 are core, non-core or *Stern* claims and make final judgment or recommendations
2 accordingly.

3 **IV. CONCLUSION**

4 The Court notes that the parties made several arguments and cited to several
5 cases not discussed above. The Court has reviewed these arguments and cases and
6 determines that they do not warrant discussion or reconsideration as they do not affect
7 the outcome of the Motion.

8 It is therefore ordered that Defendants' Motion to Withdraw Reference (dkt. no. 1)
9 is denied.

10 DATED THIS 12th day of November 2014.

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13 MIRANDA M. DU
14 UNITED STATES DISTRICT JUDGE
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